NO. 21708

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LAWRENCE MONROE HAVEN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

WM. MATTHEW BYRNE, JR.,
United States Attorney,

ROBERT L. BROSIO,
Assistant U. S. Attorney,
Chief, Criminal Division,

ARNOLD G. REGARDIE,
Assistant U. S. Attorney,

1200 U. S. Court House
312 North Spring Street
Los Angeles, California 90012

Attorneys for Appellee,
United States of America.

NO. 21708

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LAWRENCE MONROE HAVEN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

WM. MATTHEW BYRNE, JR.,
United States Attorney,

ROBERT L. BROSIO,
Assistant U. S. Attorney,
Chief, Criminal Division,

ARNOLD G. REGARDIE,
Assistant U. S. Attorney,

1200 U. S. Court House
312 North Spring Street
Los Angeles, California 90012

Attorneys for Appellee,
United States of America.

TOPICAL INDEX

TABLE OF AUTHORITIES

NO. 21708

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LAWRENCE MONROE HAVEN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

I

JURISDICTIONAL STATEMENT

Appellant Lawrence Monroe Haven was indicted by the Federal Grand Jury for the Southern District of California, Central Division, on October 26, 1966, in Case No. 36769-CD [C. T. 2-3]. 1/ The Indictment charged a violation of Title 50 Appendix, United States Code, Section 462, Universal Military Training and Service Act; Failure to Report for Employment.

The appellant was arraigned on November 14, 1966, before

1/ "C. T." refers to Clerk's Transcript of Record.

the Honorable Jesse W. Curtis, United States District Judge and entered a plea of not guilty. The appellant waived his right to counsel at this time [C. T. 11]. On December 20, 1966, counsel was appointed for appellant [C. T. 25]. On December 23, 1966, case number 36769 was called for court trial before the Honorable A. Andrew Hauk, United States District Judge. The case was subsequently continued to January 13, 1967 [C. T. 29]. On January 13, 1967, the appellant was found guilty by the court [C. T. 39] and on February 6, 1967, appellant was sentenced to the custody of the Attorney General for a term of three years [C. T. 36]. A timely notice of appeal was filed on February 7, 1967 [C. T. 45] and appellant was released on bond pending appeal.

Jurisdiction of the trial court was founded upon Title 50, Appendix, United States Code, Section 462, Title 18, United States Code, Section 3231 and Rule 18 of the Federal Rules of Criminal Procedure. This Court has jurisdiction to review the judgment of the District Court pursuant to Title 28, United States Code, Sections 1291 and 1294, and Rule 37(a) of the Federal Rules of Criminal Procedure.

II

STATUTES INVOLVED

Title 50, Appendix, Section 462, United States Code, provides in pertinent part as follows:

"Any member of the Selective Service System

or any other person charged as herein provided with the duty of carrying out any of the provisions of this title . . . or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty . . . or who otherwise evades or refuses . . . service in the armed forces or any of the requirements of this title . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title . . . or rules, regulations or directions made pursuant to this title . . . shall, upon conviction in any District Court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both. . . ."

Title 50 Appendix, Section 456(j) states:

"(j) Conscientious objectors, -- Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from

any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in Section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of Section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title."

Title 32, Code of Federal Regulations, Part 1660, provides in pertinent part as follows:

"1660.20 - Determination of type of civilian work to be performed and order by the Local Board

to perform such work.

"(a) . . . a registrant . . . shall submit to the Local Board three types of civilian work contributing to the maintenance of the national health, safety, or interest as defined in Section 1660.1, which he is qualified to do and which he offers to perform in lieu of induction into the armed forces . . . .

"(b) If the registrant fails to submit to the Local Board types of work which he offers to perform, . . . the Local Board shall submit to the registrant by letter three types of civilian work contributing to the maintenance of the national health, safety, or interest as defined in Section 1660.1 which it deems appropriate for the registrant to perform in lieu of induction . . . .

"(c) If the Local Board and the registrant are unable to agree upon a type of civilian work which should be performed by the registrant in lieu of induction, the State Director of Selective Service for the state in which the Local Board is located or the representative of such State Director, appointed by him for that purpose, shall meet with the Local Board and the registrant and offer his assistance in reaching an agreement . . . .

"(d) If, after the meeting referred to in paragraph (c) of this section, the Local Board and

registrant are still unable to agree upon a type of civilian work which should be performed by the registrant in lieu of induction, the Local Board, with the approval of the Director of Selective Service, shall order the registrant to report for civilian work contributing to the maintenance of the national health, safety, or interest as defined in Section 1660.1 which is deemed appropriate, ..."

Title 32 C.F.R. §1641.2(b) provides:

"If a registrant or any other person concerned fails to claim and exercise any right or privilege within the required time, he shall be deemed to have waived the right or privilege."

III

STATEMENT OF THE FACTS

At the time of the trial of this case a photographic copy of the Official Selective Service System file for appellant was offered and admitted into evidence as Government's Exhibit No. 1 [R.T. 27]. 2/ This copy had attached to it a certificate by Captain T. D. Profitt, U.S.A.F. (Ret.), District Coordinator, Selective Service System, that it was a full, true and correct copy of the original

---

2/ "R.T." refers to Reporter's Transcript of Record.

file of which he had legal custody. Also attached was a certificate and seal of Major (now Colonel) Malcolm F. Miller, Staff Secretary, Headquarters Southern Area, Selective Service System, to the effect that Captain Profitt was the District Coordinator and had custody of the original Selective Service file of the appellant.

This file revealed the following events with respect to appellant's status with the Selective Service System:

On September 28, 1960 appellant registered with Local Board No. 137, Riverside, California [pp. 1-2]. 3/

Appellant was assigned the following classifications on the designated dates by Local Board No. 137 (hereinafter referred to as the "Board"):

October 7, 1963 - 1-A

March 4, 1964 - 1-A

July 1, 1964 - 1-A

October 28, 1965 - 1-O

On August 30, 1963, the Board received a completed Classification Questionnaire (SSS 100) from appellant. Appellant did not complete Series VII relating to Ministers or students preparing for the Ministry but he did sign Series VIII relating to Conscientious Objectors [pp. 4-8].

On September 17, 1963 a completed Special Form For Conscientious Objector (SSS 150) was received by the Board from appellant [pp. 15-19].

3/ Refers to pages of appellant's Selective Service File, (Government's Exhibit No. 1).

On October 7, 1963 appellant was classified in Class 1-A and notice of such classification was sent to appellant [p. 11].

On December 10, 1963, the Board received from appellant a completed Current Information Questionnaire (SSS 127) [pp. 20-22].

On March 4, 1964 appellant was classified in Class 1-A and notice of such classification was sent to appellant [p. 11].

On March 24, 1964 appellant was ordered to report for an Armed Forces Physical Examination on April 16, 1964 [pp. 11, 23].

On May 4, 1964 a Statement of Acceptability (DD 62) was mailed to appellant [pp. 11, 36].

On July 1, 1964 appellant appeared before the Board for an interview. He stated inter alia that he had not appealed his classification because he had heard from other people that it would do no good, that others have just gone to prison. He stated that he had really not done much religious work as he had not completed enough hours but that now he considered himself a minister. Appellant stated that he would not work for the Government in any way [p. 38].

On July 1, 1964 appellant was classified in Class 1-A and notice of such classification was mailed to him [p. 11].

On October 28, 1964, after inquiry and recommendation by the Department of Justice, appellant was classified in Class 1-O by the Appeal Board and on November 3, 1965, notice of such classification (SSS 110) was mailed to him [p. 11].

On November 23, 1965, a Special Report For Class 1-O

Registrants (SSS 152) was mailed to appellant and was returned incomplete on December 6, 1966 [pp. 11, 54-57].

On January 23, 1966, the Board sent appellant a letter suggestion three types of civilian work in lieu of induction. On February 7, 1966, this letter was returned to the Board with appellant indicating that he did not wish to perform any of the types of work suggested by the Board [pp. 11, 60, 61].

On March 8, 1966, appellant appeared before the Board for an interview in order to reach an agreement on a type of work to be performed by him in lieu of induction. Appellant advised that he was not a pioneer minister. He also indicated that he refused to accept any type of work of material importance in lieu of induction into the Armed Forces. The Board determined that work as an institutional helper, Los Angeles County Department of Charities, was available and this work was appropriate to be performed by appellant [pp. 12, 65, 66, 67].

On April 11, 1966 appellant was ordered by the Board to report to the Board on April 25, 1966 to receive instructions to report for civilian work [p. 12].

On April 25, 1966 appellant reported to the Board and was instructed to report to the Los Angeles Department of Charities not later than April 26, 1966. Appellant stated that he did not intend to report as ordered [pp. 12, 72, 73].

On May 11, 1966, the Board received a Statement of Employer (SSS 153) indicating that appellant did not report as ordered and had not reported to the Los Angeles County Department of Charities as

ordered [pp. 12, 74].

IV

QUESTIONS RAISED ON APPEAL

I Did the trial court err in admitting in evidence the Selective Service System file of the appellant?

II Did the trial court err in failing to appoint counsel for appellant at an earlier stage in his defense?

III Did the trial court err in not requiring the Government to put into evidence facts and figures relating to the religious composition of local draft boards?

V

ARGUMENT

A. THE TRIAL COURT PROPERLY ADMITTED INTO EVIDENCE THE CERTIFIED PHOTOGRAPHIC COPY OF THE APPELLANT'S OFFICIAL SELECTIVE SERVICE FILE.

Rule 44(a), Federal Rules of Civil Procedure, provides that an official record or an entry therein, when admissible for any purpose, may be evidenced by a copy attested by the officer having legal custody of the record, and accompanied with a certificate that such office in which the record is kept is within the United States. The certificate may be made by any public officer having a seal of office and having official duties in the political subdivision in which

the record is kept, authenticated by the seal of his office.

Title 28, United States Code, Section 1733, provides that records of account or minutes of proceedings of any department or agency of the United States shall be admissible to prove the act, transaction, or occurrence as a memorandum of which the same were made or kept. Section 1733 also provides that properly authenticated copies of any books, records, papers, or documents of any department or agency of the United States shall be admitted into evidence equally with the originals thereof.

Rule 27, Federal Rules of Criminal Procedure, provides that an official record or any entry therein may be proved in the same manner as in civil actions.

Appellant contends that the trial court erred by admitting into evidence a bound photographic copy of his original selective service file. This document had been attested and certified in compliance with the above mentioned rules of procedure (See Government's Exhibit No. 1).

Appellant alleges that the introduction of this document violated the best evidence rule and was hearsay (Appellant's Brief, p. 4, lines 20-21). He cites, however, no case law to support his unique interpretation of Rule 44(a), Federal Rules of Civil Procedure, and Section 1733, United States Code, Title 28, nor does he specify what portion of these statutes make the certified copy of appellant's selective service file inadmissible.

This Circuit has previously approved the proposition that a duty authenticated copy of the registrant's selective service file is

inadmissible in a prosecution for violation of Title 50 Appendix, United States Code, Section 462.

LaPorte v. United States, 300 F.2d 878 (9th Cir. 1962);

Yaich v. United States, 283 F.2d 613 (9th Cir. 1960);

Kariakin v. United States, 261 F.2d 263 (9th Cir. 1958);

Olender v. United States, 210 F.2d 795 (9th Cir. 1954).

See also:

United States v. Borisuk, 206 F.2d 338 (3rd Cir. 1953);

United States v. Parrott, 370 F.2d 388 (9th Cir. 1966).

Besides failing to support with legal authority the alleged error in introducing appellant's Selective Service File, appellant continues with an argument that is not relevant to this issue. Appellant points out that placing his Selective Service file into evidence precluded him from questioning the local board as to his 1-A classification [Appellant's Brief, p. 4]. Appellant was classified as 1-O on October 28, 1964 (See Statement of Facts, supra, p. 8). Thus, any argument as to his 1-A classification is immaterial.

Appellant cites Falbo v. United States, 320 U.S. 549 (1944) for the proposition that "a person was required to use all of his administrative remedies before being able to proceed in a court."

(Appellant's Brief, p. 4, lines 23-26). This is immediately preceded by the allegation that "[t]he Government is attempting to use the file of appellant as a sword rather than a shield." There is no apparent connection between the two statements and their relevancy to appellant's contention that the introduction of the Selective Service file was erroneous is at best questionable. Falbo, supra, dealt with the question of whether Congress had authorized judicial review of the propriety of a board's classification and did not touch on the question of admissibility of the Selective Service file.

B. THE TRIAL COURT DID NOT ERR IN FAILING TO APPOINT COUNSEL FOR DEFENDANT AT AN EARLIER STAGE IN HIS DEFENSE.

Appellant's argument does not support the error alleged. Appellant's Brief, p. 6, lines 4-19, contains a summary of appellant's purported progress within the ranks of the Jehovah's Witnesses and a claim of appellant's readiness to do charitable work of his own volition (Appellant's Brief, p. 6, lines 20-25). This is in no way relevant to a claimed denial of counsel at an earlier stage of the proceedings.

Assuming arguendo that appellant's citations of Miranda v. Arizona, 384 U.S. 436 (1966) and Escobedo v. Illinois, 378 U.S. 478 (1964) [Appellant's Brief, p. 5, lines 3-4] were meant to support his alleged claim of error in not appointing counsel at an earlier stage of the proceedings, appellant's contention nevertheless must

fall.

In the first place, appellant's specification of error is not precise because he does not point to which stage counsel should have been appointed.

Secondly, it is to be noted that appellant waived right to counsel at his arraignment on November 14, 1966 [C. T. 11]. Appellant also waived right to counsel when interviewed by the F. B. I. on October 12, 1966 [R. T. 29-30].

Thirdly, if it is to be assumed that appellant is claiming that counsel should have been appointed during appellant's processing before his local board, he has cited no legal authority in support thereof. Citations of Miranda, supra, and Escobedo, supra, appearing on page 5 of Appellant's Brief fall far short of this mark. In actuality, appellant is not legally entitled to counsel when appearing before the board as explained below.

The right to assistance of counsel is provided for and regulated by the Constitution of the United States, federal statutes 4/ and the Rules of Criminal Procedure.

The Sixth Amendment to the Constitution of the United States provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense." (Emphasis added)

The Rules of Criminal Procedure provide as follows:

"Every defendant who is unable to obtain

4/ See e. g., 18 U. S. C. §3005 Counsel and Witnesses in Capital Cases.

counsel shall be entitled to have counsel assigned to represent him at every stage of the proceedings from his initial appearance before the commissioner or the court through appeal, unless he waives such appointment." 5/

The Sixth Amendment applies only to trial in the Federal courts.

Betts v. Brady, 316 U.S. 455, 461 (1942)

and cases there cited.

The right to assistance of counsel does not exist in civil proceedings.

"The absence of a constitutional right to counsel in administrative proceedings under the Selective Service Act has been emphatically and frequently upheld, usually on the ground that these proceedings are in truth administrative and are not criminal proceedings."

United States v. Wierzchucki, 248 F. Supp. 788, 790 (D.C. W.D. Wis. 1965).

In the Administrative Procedure Act, Congress has provided that anyone compelled to appear before an agency of the Government is entitled to appear in person or with counsel or other qualified representative.

5/ Federal Rules of Criminal Procedure, Rule 44(a), 18 U.S.C.A.

Title 5, U. S. C. §555(b).

However, the entire administrative process under the Selective Service Act has been expressly removed from the application of the Administrative Procedures Act.

Title 50, U. S. C. App. §463(b).

Furthermore, the regulations governing the administration of the Selective Service System expressly provide " . . . [t]hat no registrant may be represented before the local board by anyone acting as his attorney or legal counsel."

Title 32 C. F. R., Chap. XVI, Part 1624. 1(b).

C. THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT APPELLANT'S ALLEGATION OF A SYSTEMATIC EXCLUSION OF JEHOVAH'S WITNESSES FROM SERVICE ON LOCAL DRAFT BOARDS.

The general rule in criminal cases is that the accused is presumed innocent until his guilt is established by the prosecution beyond all reasonable doubt. However, if the accused sets up distinct substantive matter to exempt him from punishment he has the burden of proof in such matters.

20 Am. Jur. Evidence §134.

As pointed out by Colonel Miller during the course of the trial, the composition of the local boards is controlled by law [R. T. 108-111]. Religious belief is not included among the criteria for selection. The regulations governing the Selective Service System provide as follows:

"(a) A local board of three or more members shall be appointed for each local board area by the President upon recommendation by the Governor.

"(b) A local board of three or more members, with at least one member from each county included within the intercounty local board area, shall be appointed for each intercounty local board area by the President upon recommendation of the Governor.

"(c) The members of the local boards shall be male citizens of the United States who shall be residents of a county in which their local board has jurisdiction and who shall also, if at all practicable, be residents of the area in which their local board has jurisdiction. No member of a local board shall be a member of the armed forces or any reserve component thereof. Members of local boards shall be at least thirty years of age."

Title 32 C.F.R. Chap. XVI, §1604.52.

The regulations also provide that:

"In classifying a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious, or other organization. Each such registrant shall receive equal justice."

Title 32 C.F.R., Chap. XVI §1622.1(d).

"It is the settled general rule that all necessary prerequisites to the validity of official action are presumed to have been complied with, and that where the contrary is asserted it must be affirmatively shown."

(Emphasis added)

Lewis v. United States, 279 U.S. 63, 73 (1929);

Keene v. United States, 266 F. 2d 378, 380 (10th Cir. 1959).

Appellant in the Keene case, supra, alleged a failure on the part of the Government to prove the indispensable factum of a quorum of appellant's draft board when his 1-A classification was determined. The court indulged in the traditional presumption of regularity and validity of board actions and concluded that although the appellant had raised the question of the competency of the board, ". . . it offered no proof whatsoever that it was illegally or improperly constituted when it classified him." Keene v. United States, supra, at p. 381.

Similarly, here, appellant has raised a question as to the religious composition of the board, alleging a violation of due process in that he has been a victim of discrimination because no member of the Jehovah's Witnesses had ever been asked to serve on a local board (Appellant's Brief, pp. 7-8). However, he adduced no proof in support of this claim. Appellant claims that one of his witnesses, Melvin Sargent (an overseer of the East Los Angeles congregation of Jehovah's Witnesses, R. T. 56, lines 24, 25, and a member of Jehovah's Witnesses for fifty-four years, R. T. 58, line 25) said

"It is the settled general rule that all necessary prerequisites to the validity of official action are presumed to have been complied with, and that where the contrary is asserted it must be affirmatively shown." (Emphasis added)

Lewis v. United States, 279 U.S. 63, 73 (1929);

Keene v. United States, 266 F. 2d 378, 380 (10th Cir. 1959).

Appellant in the Keene case, supra, alleged a failure on the part of the Government to prove the indispensable factum of a quorum of appellant's draft board when his 1-A classification was determined. The court indulged in the traditional presumption of regularity and validity of board actions and concluded that although the appellant had raised the question of the competency of the board, ". . . it offered no proof whatsoever that it was illegally or improperly constituted when it classified him." Keene v. United States, supra, at p. 381.

Similarly, here, appellant has raised a question as to the religious composition of the board, alleging a violation of due process in that he has been a victim of discrimination because no member of the Jehovah's Witnesses had ever been asked to serve on a local board (Appellant's Brief, pp. 7-8). However, he adduced no proof in support of this claim. Appellant claims that one of his witnesses, Melvin Sargent (an overseer of the East Los Angeles congregation of Jehovah's Witnesses, R. T. 56, lines 24, 25, and a member of Jehovah's Witnesses for fifty-four years, R. T. 58, line 25) said

that no member of Jehovah's Witnesses has ever been asked to serve on a local draft board (Appellant's Brief, p. 7, lines 18-20). The transcript of the trial shows that the question was whether any member of his congregation had ever been asked to serve on a local board [R. T. 57, lines 21-23] (Emphasis added). This witness further admitted not having talked to other congregations and not having talked to other Jehovah's Witnesses about it [R. T. 58, lines 6-12], and not having checked throughout the country [R. T. 69, lines 3-5]. He said that some Jehovah's Witnesses as far as he knew might be serving on local boards [R. T. 69, lines 10-13]. Mr. Sargent also stated that he would not serve on a local board if asked [R. T. 74, lines 4-12; 76, lines 10-16], that he would not take the Oath of Office required of members of a local board [R. T. 76, lines 10-16] and that he had never heard of a Jehovah's Witness that had actually taken the oath [R. T. 77, lines 2-4].

Appellant further claims that he personally contacted seven other congregations from Los Angeles to Indio and that no member within that group had been asked to serve on a local board (Appellant's Brief, p. 7, lines 21-24). Actually, he contacted only seven people, one person from each congregation [R. T. 87, lines 14-19]. Appellant admitted that it would be a compromise of his position to serve on a local board [R. T. 91, lines 17-22; 101, lines 8-12].

Appellant urges that no satisfactory explanation was made to the court for the failure of the Marshal to produce the necessary witnesses for his defense. In fact, there was only one witness in issue, William Jackson from Jehovah's Witness National

Headquarters in New York, and as appellant concedes, the witness secreted himself (Appellant's Brief, p. 7, lines 9-12). Far from being unsatisfied with the Marshal's explanation of his failure to serve the witness in question, the court was convinced that the witness had evaded service [R. T. 11, lines 9-12; 14, lines 11-15; 22, lines 4-6, 9-14, 20-24; 23, lines 2-23; 24, lines 4-25; 46, lines 15-25; 47, lines 5-9]. Note that the court even signed his Order that the witness had evaded service [C. T. 27; R. T. 24, lines 4-25]. The record further indicates that all national officers of the Jehovah's Witnesses were in South America on a series of assemblies for the whole month of January [R. T. 80, lines 12-18]. Therefore, it can hardly be concluded that the Marshal was at fault in failing to produce the necessary witnesses.

Far from creating a " . . . 'factual vacuum' which only the Government could step in and fulfill, " the testimony elicited during the trial, as reviewed above, clearly shows that appellant has not established any prima facie case of discrimination against him. Even if appellant's secretive witness, William Jackson, had testified, it is questionable as to what he could have proved since appellant's counsel informed the court that Mr. Jackson had told him that he (Mr. Jackson) had no record through their headquarters that any Jehovah's Witness had ever served on a draft board [R. T. 8, lines 9-11]. Furthermore, it is doubtful that the proposition advanced by appellant is capable of proof since no inquiry as to religious belief is made of any board member [R. T. 110, lines 13-19], and Title 32, C. F. R. Chap. XVI, §1604. 52, supra, p. 16].

Lastly, it should be pointed out that appellant at no time until he came into court made any charge of prejudice or discrimination by the board, either against him or against Jehovah's Witnesses in general. Appellant cannot therefore for the first time at his trial charge arbitrariness or prejudice to his local board.

United States v. Phillips, 143 F. Supp. 496, 503 (N. D. W. Va. 1956); aff'd per curiam, 239 F. 2d 148 (4th Cir. 1956);

United States v. Jackson, 369 F. 2d 936, 939 (4th Cir. 1966).

VI

CONCLUSION

For the reasons stated, the decision of the trial court should be affirmed.

Respectfully submitted,

WM. MATTHEW BYRNE, JR.,
United States Attorney,

ROBERT L. BROSIO,
Assistant U. S. Attorney,
Chief, Criminal Division,

ARNOLD G. REGARDIE,
Assistant U. S. Attorney,

Attorneys for Appellee,
United States of America.

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Arnold G. Regardie
ARNOLD G. REGARDIE